

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE
SERVICES

FOR THE STATE OF MICHIGAN,

File No.: 03-1127-CR

HONORABLE William E. Collette

Petitioner,

v

THE WELLNESS PLAN, INC.,
a Michigan health maintenance organization

Respondent.

MARK J. ZAUSMER (P31721)
AMY M. SITNER (P46900)
Zausmer, Kaufman, August & Caldwell,
P.C.
Attorneys for Petitioner, Rehabilitator of
the Wellness Plan
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

KERR, RUSSELL AND WEBER PLC
Patrick J. Haddad (P42819)
Attorney for Network Administration and
Oakland Southfield Physicians
500 Woodward Avenue, Suite 2500
Detroit, MI 48226-3427
(313) 961-0200

APPEARANCE OF COUNSEL

TO: CLERK OF THE COURT

Please enter the appearance of the undersigned as the attorney in the above-captioned cause for Network Administration, Inc. and Oakland Southfield Physicians, P.C.

Respectfully submitted by,

KERR, RUSSELL AND WEBER, PLC

By: 

Patrick J. Haddad (P42819)

Attorneys for Network Administration
and Oakland Southfield Physicians, PC
500 Woodward Avenue, Suite 2500
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(313) 961-0200

KERR, RUSSELL
AND WEBER, PLC

Dated: April 20, 2005

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PROOF OF SERVICE

The undersigned certifies that a copy of an APPEARANCE and this Proof of Service was served upon all parties of record herein at their respective addresses as evidenced in the pleadings on file herein on April 20, 2005 by U.S. Mail.

I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.


CARYNE DEMATTEO

KERR, RUSSELL
AND WEBER, PLC

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**BRIEF OF NETWORK ADMINISTRATION, INC. AND
OAKLAND SOUTHFIELD PHYSICIANS, P.C. CONCERNING
CLASSIFICATION AND PAYMENT OF CREDITORS' CLAIMS**

Network Administration, Inc. is the licensed third party administrator for Oakland Southfield Physicians, P.C. Oakland Southfield Physicians is party to a Multispecialty Care Agreement (the "Agreement") with The Wellness Plan ("TWP"). Amounts payable

KERR, RUSSELL
AND WEBER, PLC

by TWP under the Agreement exceed \$1 million for the pre and post-rehabilitation periods combined.

By its order of February 28, 2005, the Court invited interested parties to present arguments on the issue of how claims in TWP's rehabilitation will be classed and paid under Chapter 81 of the Michigan Insurance Code. MCLA §500.8142 establishes the priority of the distribution of claims from an insurer's estate and provides as follows:

(1) Except as provided in subsection (2), the priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

(a) Class 1. The costs and expenses of administration . . .

(b) Class 2. Except as otherwise provided in this section, all claims under policies for losses incurred, including third party claims, and all claims of a guaranty association or foreign guaranty association. However, obligations of an insolvent insurer arising out of reinsurance contracts shall not be included in this class. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. For purposes of this section, life insurance and annuity policies include, but are not limited to, individual annuities, group annuities, guaranteed investment contracts, and funding agreement contracts, issued by an insurer. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to his or her employee shall not be treated as a gratuity.

(c) Class 3. Claims of the federal government.

(d) Class 4. All claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property that are not under policies and, to the extent not included in class 1, debts due to employees for services performed to the extent that they do not exceed \$1,000.00 and represent

payment for services performed within 1 year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of the priority for debts due to employees for services performed. The priority for debts due to employees for services performed is in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(e) Class 5. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

* * *

MCLA §500.8142 (emphasis added).

The claims of physicians, other health professionals and other health care providers should be classified and paid as Class 2 claims under MCLA §500.8142(b). Health maintenance organizations are obligated by statute to furnish their enrollees with designated health services. Unlike indemnity insurers, health maintenance organizations do not pay claims to enrollees. Rather, "losses incurred" by a health maintenance organization are the amounts payable to physicians, health professionals and other health care providers.

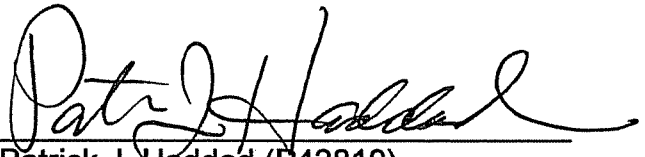
For these reasons, as well as to achieve the equitable objectives of Chapter 81 of the Insurance Code, the Court is urged to conclude that per MCLA §500.8142(b), "claims under policies for losses incurred, including third party claims" encompass claims of physicians and other health care providers, including the pre-rehabilitation claims payable by TWP under the Agreement. This conclusion is in keeping with the principle of statutory construction that every word in a statute is presumed to have meaning, and the courts are to avoid any construction that would render any portion of a statute nugatory. *LaGuire v Kain*, 185 Mich App 239, 243, 460 NW2d 598 (1990) (citation omitted). Physicians, other health professionals and other providers must be made

whole to achieve equity and to fulfill the mandate of MCLA §500.8142(b), as well as to be in a position to continue furnishing services to Michigan's Medicaid population.

Relief Requested

Network Administration, Inc. and Oakland Southfield Physicians, P.C. respectfully request that the Court order that all pre-rehabilitation amounts payable under the Agreement by TWP are classified and paid as Class 2 claims under MCLA §500.8142(b).

KERR, RUSSELL AND WEBER, PLC

By: 
Patrick J. Haddad (P42819)
Attorney for Network Administration and
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Dated: April 20, 2005

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PROOF OF SERVICE

The undersigned certifies that a copy of the **BRIEF OF NETWORK ADMINISTRATION, INC. AND OAKLAND SOUTHFIELD PHYSICIANS, P.C.** was served upon the following parties:

Mark J. Zausmer, Esq.
Attorneys for Petitioner, Rehabilitator of the Wellness Plan
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334

KERR, RUSSELL
AND WEBER, PLC

Ingham County Circuit Court Clerk
30th Circuit Court
Mason Courthouse
Mason, MI 48854

on April 20, 2005.

I declare under the penalty of perjury that the statement above is true and correct to the best of my information, knowledge and belief.


CARYNE DEMATTEO